IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 142 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASHAJI MANGAJI THAKORE & 2 - Appellant(s)
Versus
KALAJI SHIVAJI THAKORE & 4 - Defendant(s)

==========

Appearance :
MR PV NANAVATI for Appellant(s) : 1 - 3.
MR PM THAKKAR for Defendant(s) : 1 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 27/07/2006

ORAL JUDGMENT

Present Appeal has been filed by the appellants, original-defendants challenging the judgment and decree dated 5th October 1982 passed by the learned Judge, City Civil Court at

Ahmedabad in Civil Suit No. 241 of 1979 in decreeing the said suit and directing the appellants to hand over to the plaintiffs vacant and peaceful possession of the suit property.

2. The respondents, original-plaintiffs (hereinafter referred to as 'the plaintiffs') filed Civil Suit No. 241 of 1979 in the City Civil Court at Ahmedabad for actual and vacant possession of the suit premises.

3. It was averred in the suit that suit premises consist of a room and open space in front of it and the suit room forms part of the property situated in Plot No. 7 of Final Plot No. 504 of Survey No. 203/2 at Paldi. As per the averment in the plaint the suit property was purchased by their uncle Revaji Kanaji who died without any issue before about 40 years and they inherited the entire property from their deceased uncle Revaji. The deceased also further averred

that original-defendant No.3 who was their distant aunt was residing with her husband on open piece of land in Madhupura and they were doing labour work and only with a view to help them they brought her to the plot No.7 at her request and allowed her to stay in the suit room as the licensee. No licence fee was to be charged as they were relatives. The husband of defendant No.3 expired about 8 to 9 years ago and thereafter all the 3 defendants continued to stay in the suit room as licensees of the plaintiffs. As they were experiencing shortage of space on account of increase in number of their family members, they served a notice revoking the licence and calling upon them to hand over the actual and vacant possession of the suit room to the plaintiffs, however as the defendants did not hand over the possession of the suit room to the plaintiffs and they continued in illegal possession of the suit room after the revocation of the licence, the aforesaid suit came to be

filed for the aforesaid reliefs.

4. The suit was resisted by all the defendants by filing joint written statement at Exh. 8. The defendants denied the plaintiffs' title over the suit premises. It was also contended on behalf of the defendants that her father Kasaji, one Kanaji and one Viraji were real brothers and the plaintiffs are the descendants of the said Kanaji except plaintiff No.2. It was further submitted that the said Kasaji, father of defendant No.3 purchased open piece of land from Mukhi of Bhudarpura and he constructed the suit property and another room bearing No.8. It was further submitted that during the life time of her father Kasaji, defendant No.3 went to reside in the suit room situated at sub-plot No.8 before about 50 years and she had started to reside in the said room along with her husband and since then they were residing in the suit room. They also

specifically denied that the defendants are the licensees or that they were invited to stay in the suit room by Shivaji Kanaji and Mathurji Kanaji. Therefore it was requested to dismiss the suit. The learned Trial Judge raised the Issues at Exh. 12. The plaintiffs examined plaintiff No.1 Kanaji Shivaji Exh.30 and one Hiraji Khodaji at Exh. 34. On the defendants' side, defendant No.3 was examined at Exh. 39, her daughter Laxmiben was examined at Exh. 41, and one Kandaji Ranchhodji was examined at Exh. 42. On appreciation of evidence, oral as well as documentary and after giving opportunity to the parties, the learned trial Judge decreed the suit by directing the defendants to hand over the peaceful and vacant possession of the suit room to the plaintiffs by holding that the plaintiffs proved that they are owners of the suit premises, plaintiffs also further proved that the defendants are their licensees of the suit premises and that the defendants have failed to

prove their title over the said property as contended in the written statement. The learned Trial Judge also negatived the contention on behalf of the defendants that they have become the owners of the suit premises by adverse possession. Being aggrieved and dissatisfied with the same, the defendants have preferred the present Appeal.

5. Shri Nanavati, learned advocate appearing on behalf of the appellants, has submitted that the learned Trial Judge has materially erred in coming to the conclusion that the defendants were the licensees in the suit premises of the plaintiffs. It is further submitted by him that the learned Trial Judge has also materially erred in coming to the conclusion that all the defendants have failed to prove their title over the suit property. It is further submitted that the learned trial Judge ought to have drawn inference that the plaintiffs could not have

permitted the defendants to reside in the suit property for such a long period without any consideration and the very fact that they were permitted to reside in the suit property without any consideration is consistent with the plea of the defendants that they have become owner by adverse possession of the suit premises.

6. Learned advocate appearing on behalf of the respondents, original-plaintiffs have supported the judgment and decree passed by the learned Trial Judge and has submitted that the learned Judge on appreciation of oral as well as documentary evidences has rightly come to the conclusion that the defendants were the licensees and that the learned Trial Judge has rightly decreed the suit.

7. Heard the learned advocates appearing on behalf of the parties. The case on behalf of the plaintiffs is that the suit property originally

belonged to Revaji Kanaji and that the said Revaji died without any issue. The suit property was inherited by his brothers, Shivaji Kanaji, Chathurji Kanaji and Mathurji Kanaji and on the death of 3 brothers the suit property was inherited by the plaintiffs. On the other hand, the defendants' case was that the land of the suit property was purchased by Kasaji Dungarji, father of defendant No.3 and the said Kasaji constructed the suit property on sub-plot No.7 and constructed another house on sub-plot No.8, and the defendant No.3 came to stay in the suit property with her husband before about 50 years during the life time of her father, said Kasaji. Now, considering the evidence on record,nothing is on record to show that sub-plot No.6 or sub-plot No.7 or sub-plot No.8 were ever stood in the name of Kasaji in the revenue record. The suit property, admittedly, stands in the name of plaintiffs No. 1 and 2 deceased Mathurji and Chathurji, the predecessors of plaintiffs No.3, 4

and 5 respectively. It has also come on evidence that even the property was mortgaged in the year 1937-38 (Exh.24) by Shivaji and his deceased brother, Mathurji and Chathurji. Not only that, but before that property was mortgaged by deceased Revaji Kasaji on 6.5.1931 for an amount of Rs. 235 and the said mortgage was finally redeemed in the year 1944. Thus, it has come on record that plaintiffs' predecessors were the owners of the suit property without any objection from Kasaji, father of defendant No.3. Nothing is on record that the said Kasaji, father of Defendant No.3 had ever objected to mortgaging the property by deceased Revaji. Thus, if Kasaji would have been owner, he would have certainly opposed and/or objected to the mortgage of the property by his brothers. Thus,the plaintiffs have proved their title, and the learned Trial Judge has not committed any error in holding in favour of the plaintiffs. There is no evidence on record that the father of the

defendant No.3, i.e., Kasaji had purchased the land of the suit property. The defendants had miserably failed to prove that the suit property was constructed by the father of the defendant No.3.

8. Considering the evidence on record, the learned Trial Judge has rightly negatived the contention on behalf of the defendants that they have become the owners of the suit property by adverse possession. The mere fact that the defendant No.3 has been in possession of the suit property since last number of years would not by itself go to show that she has been in adverse possession of the suit property. Now, on evidence,it has come that defendant No.3 became the widow and at the time of marriage she resided with her husband in Jugaldasji Chawl for a period of 3 to 4 years and after one year of her marriage she lost her father. Thus, on appreciation of evidence, the learned Trial Judge

has come to the conclusion that the defendant No.3 was permitted to stay in the suit room considering her financial position. The defendant No.3 has failed to establish her title over the suit property. Under the circumstances, the learned Trial Judge has rightly passed a decree against the defendants by holding that the defendants were the licensees. On going through the entire evidence, oral as well as documentary, it appears that the learned Trial Judge has not committed any error in decreeing the suit. This Court is in complete agreement with the reasoning and finding of the learned Trial Judge.

9. For the reasons stated above, there is no substance in the Appeal and the same is required to be dismissed and it is dismissed. Interim relief,if any stands vacated forthwith.

Rmr. *[M.R. Shah, J.]*